

EXHIBIT 11

MAO DECLARATION ISO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DOCUMENT SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,
Plaintiffs,

v. Case No.
GOOGLE LLC, 20-cv-04688-RS
Defendant.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
ZOOM VIDEOTAPED DEPOSITION OF DAVID MONSEES
Thursday, September 15, 2022
9:00 a.m. PST

TAKEN BY:
MARK MAO, ESQ.
ATTORNEY FOR PLAINTIFF

REPORTED BY:
BELLE VIVIENNE, RPR, CRR, NJ-CRR,
WA/CO/NM-CCR
NATIONALLY CERTIFIED REALTIME
COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5431690
866.299.5127

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MARK MAO
LOGAN WRIGHT
BEKO REBLITZ-RICHARDSON
BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
San Francisco, California 94104
Mmao@bsfllp.com

RYAN MCGEE
MORGAN & MORGAN
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Rmcgee@forthepeople.com

ALEXANDER FRAWLEY
SUSMAN GODFREY LLP
1301 Avenue of the Americas
32nd Floor
New York, New York 10019
Afrawley@susmangodfrey.com

FOR THE DEFENDANT:

EDUARDO E. SANTACANA
WILLKIE FARR & GALLAGHER LLP
One Front Street, 34th Floor
San Francisco, California 94111
esantacana@willkie.com

JOHN JANHUNEN
GOOGLE
1600 Amphitheatre Pkwy
Mountain View, California 94043
Jjanhunen@google.com

VIDEOGRAPHER:

Anthony Gulino

1 profiles, is there a list of what products 06:26:27
2 may actually use either of these two 06:26:33
3 functionalities within Google? 06:26:36
4 A. Out -- outside of Footprints 06:26:40
5 then since, you know, WAA's off in this 06:26:41
6 case, I -- I don't know. 06:26:45
7 Q. Got it. Super helpful. You'd 06:26:46
8 be surprised in these cases how super 06:26:48
9 helpful either negative or double negative 06:26:51
10 answers actually are because that at least 06:26:53
11 tells you that, you know, like, your -- 06:26:55
12 you need to look elsewhere. 06:26:57
13 Let's see. Give me a second 06:26:59
14 here so I could -- okay. 06:27:01
15 So let's go back to 36 now, 06:27:04
16 again, okay? And I'm back at that same 06:27:11
17 page, I think it's 8. Let me just make 06:27:14
18 sure, again, that list. You see there on 06:27:20
19 the right there is a product App indexing? 06:27:33
20 A. I see that, yes. 06:27:38
21 Q. I'll just warn you there has 06:27:40
22 been a lot of debate over it, okay, so I 06:27:41
23 am literally asking, trying to understand 06:27:45
24 what you understand app indexing to be. 06:27:46
25 What exactly is app indexing as a product 06:27:50

Page 211

1	or data type?	06:27:53
---	---------------	----------

2	A. Sure. My familiarity with it is	06:27:56
3	to deal with the search app indexing API,	06:28:02
4	that created a way for app developers to	06:28:06
5	annotate their apps such that information	06:28:14
6	about activity in the app could be used by	06:28:17
7	the Google Search app and if a user had	06:28:21
8	consented can be uploaded and saved as	06:28:27
9	part of their Google account underneath	06:28:31
10	Supplemental Web and App Activity to give	06:28:35
11	them more personalized experiences across	06:28:36
12	Google Services.	06:28:40

13	Q. Got it. Do you know whether if	06:28:42
14	sWAA is off, whether or not app indexing	06:28:46
15	data is still collected by Google?	06:28:50

[illegible]

22	MR. SANTACANA: Sorry, you just	06:29:12
23	said -- (Cross talk) -- ask it	06:29:14
24	clearly.	06:29:14

25	MR. MAO: I understand. I	06:29:21
----	--------------------------	----------

1 appreciate it, okay. 06:29:22

2 BY MR. MAO: 06:29:22

3 Q. So -- so going back to the -- 06:29:24

4 the network flow that we had talked about 06:29:28

5 before, right, where the check, okay, the 06:29:29

6 checking on a sWAA-on, the sWAA-off is -- 06:29:34

7 I'll just use the word typically not done 06:29:40

8 until [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED]

10 is because app indexing to me, at least in 06:29:49

11 the technical level, is driven by tags 06:29:55

12 that may be in within the third-party apps 06:30:00

13 themselves via Firebase. Am I -- am I off 06:30:04

14 on that in terms of understanding how at 06:30:08

15 least on a very basic level how app 06:30:10

16 indexing kind of works? 06:30:16

17 A. That's not how I understand -- 06:30:17

18 Q. Oh, please -- 06:30:17

19 A. -- app indexing to work. 06:30:20

20 Q. Yeah, how -- how -- how do you 06:30:21

21 understand how, on a technical level, how 06:30:22

22 does app indexing actually work? 06:30:24

23 A. My understanding is that an app 06:30:26

24 that -- that tags -- I'm not even sure if 06:30:29

25 that's the right terminology for this 06:30:32

Page 213

1 particular service, their app accordingly 06:30:34
2 will then write that app activity into a 06:30:38
3 GMS Core API on Android. That data is 06:30:43
4 then made available to the Google Search 06:30:47
5 App on your phone and if the user has the 06:30:52
6 appropriate settings, either in the Google 06:30:55
7 Search app or in GMS Core, I can't recall, 06:30:59
8 and sWAA is enabled, then that data may be 06:31:02
9 uploaded to their Google account. And so 06:31:06
10 it is -- to -- to reiterate that, [REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
15 Q. So does -- does Google Search 06:31:28
16 app know whether or not that -- oops, 06:31:36
17 sorry. 06:31:37

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

22 A. As we discussed prior to the 06:31:58
23 lunch break, I -- [REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. In -- in terms of before -- was 06:32:32

7 that always the way app indexing worked, 06:32:34

8 in other words, did app indexing always 06:32:38

[REDACTED]

[REDACTED]

11 that a change that happened the last few 06:32:50

12 years or the last few months? 06:32:53

13 A. To the -- the best of my memory, 06:32:56

14 that's how it has always operated is that 06:32:58

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 Q. So -- so now this makes me 06:33:27

1 wonder, why -- why does -- you see here on 06:33:30
2 this page, [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 A. Well, I -- I think there -- as 06:33:49
6 I -- I believe we discussed before, there 06:33:52
7 are sizable differences between the 06:33:55
8 different purposes for these servers -- 06:33:57
9 these services that a user interacts with 06:34:01
10 and in the app indexing case that we're 06:34:03
11 discussing, the only benefit to the user 06:34:07
12 as explained in the Supplemental Web and 06:34:10
13 App Activity setting is the 06:34:13
14 personalization layer which then would 06:34:16
15 require an upload and saving it against a 06:34:19
16 Google account. If Supplemental Web and 06:34:22
17 App Activity is off, the user has told us 06:34:26
18 that we have technically instrumented such 06:34:28
19 that we cannot save that data, therefore, 06:34:30
20 there's no reason to try sending it. I -- 06:34:34
21 I think that's different than how other 06:34:37
22 products and services might provide their 06:34:40
23 service. 06:34:43
24 Q. So -- so you -- you think 06:34:45
25 that -- that the logic for turning that 06:34:46

Page 216

1 off for app indexing doesn't apply to 06:34:49
2 either display ads or Google Analytics 06:34:53
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED]
7 A. I -- I -- I don't think that's 06:35:07
8 exactly what I said. [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 Q. Are there any documents that you 06:35:38
17 are aware of that explains the -- the 06:35:41
18 logic behind the differences as to why 06:35:45
19 some products with sWAA controls would 06:35:50
20 check locally versus not check locally 06:35:56
21 before uploading the data to Google 06:35:58
22 servers? 06:36:03
23 A. I'm not aware of any central 06:36:06
24 document that might explain that, given 06:36:09
25 that I think these decisions are really 06:36:13

1 per service basis we discussed prior. 06:36:15

2 Q. So when you saying it's decided 06:36:21

3 per service, do you mean that the product 06:36:23

4 manager for each service decides that? 06:36:25

5 Who is the gatekeeper person, like an 06:36:27

6 actual person or decision gatekeeper that 06:36:30

7 decides for something like this whether 06:36:33

8 it's, you know -- whether it's going to be 06:36:35

9 sent to Google servers first before 06:36:39

10 checking for, you know, the SWAA settings 06:36:43

11 that may be stored in Footprints? 06:36:48

12 MR. SANTACANA: Objection, 06:36:50

13 compound, calls for speculation. 06:36:51

14 A. I don't think there would be a 06:36:57

15 single individual given the -- the scope 06:36:58

16 of decisions that you explained. 06:37:00

17 BY MR. MAO: 06:37:00

18 Q. Yeah. Sorry. So -- so you 06:37:03

19 might have to -- it might be more Google 06:37:05

20 speak and Google ways than I understand, 06:37:08

21 I -- and I appreciate that you've been at 06:37:11

22 the company for a long time. You might 06:37:13

23 have to explain to me what that process 06:37:14

24 actually kind of like looks like for 06:37:17

25 something like this. And -- and I'm 06:37:19

1 not -- again, I'm not trying to argue with 06:37:20
2 you, I'm just trying to understand. Like 06:37:22
3 so how would you decide that? Like -- 06:37:23
4 like in a typical course -- and you can 06:37:25
5 use any of these five products listed here 06:37:27
6 on this slide, like how would that 06:37:30
7 actually get decided as to, you know, this 06:37:32
8 initial kind of gatekeeping question as to 06:37:35
9 when -- when and where are the SWAA 06:37:38
10 settings actually checked in the -- in 06:37:41
11 the -- in the, you know, data flow 06:37:43
12 process? 06:37:45

13 A. Outside of the products I 06:37:47
14 manage, I -- I would have to speculate as 06:37:48
15 to those decisions and discussions. 06:37:50

16 Q. How about within the products 06:37:52
17 that you do manage? 06:37:53

18 A. Sure. Within Footprints, 06:37:57
19 which -- which is obviously not listed 06:37:59
20 here because it is the infrastructure 06:38:01
21 enabling an aspect of these different 06:38:05
22 Google Services' functionality, but 06:38:07
23 traditionally decisions like this are made 06:38:12
24 collaboratively between our partners, 06:38:15
25 teams within Google, their needs of our 06:38:18

Page 219

1 discussed, the "plus Nick Linkow and I 07:09:51
2 have discussed," I believe that's from me, 07:09:56
3 not Mr. Ruemmler. 07:09:57
4 BY MR. MAO: 07:09:57
5 Q. Oh, okay. So in -- in response 07:09:58
6 to your discussion on WAA/sWAA, were any 07:10:00
7 changes or disclosures made to Firebase 07:10:04
8 app developers regarding what happens when 07:10:09
9 sWAA is off for their app user developer 07:10:15
10 data? 07:10:18
11 MR. SANTACANA: Objection, 07:10:19
12 misstates the document. 07:10:19
13 A. I was going to say the same. I 07:10:23
14 think it misstates what I've written here. 07:10:25
15 My reference of WAA/sWAA in this case is 07:10:28
16 the same help center article that both Web 07:10:32
17 and App Activity and Supplemental Web and 07:10:38
18 App Activity are discussed in the same 07:10:39
19 article. I don't believe that I'm 07:10:40
20 referencing WAA and sWAA as two 07:10:41
21 independent settings given the other 07:10:44
22 context in this paragraph. And then to -- 07:10:46
23 to answer your question, Mr. Mao, I -- 07:10:49
24 I believe it's the same as my previous 07:10:51
25 response that I don't think -- I'm not 07:10:52

1 aware of any changes to Google Analytics 07:10:55
2 for Firebase third-party developer 07:10:59
3 disclosures particularly given the context 07:11:01
4 of this discussion with Mr. Ruemmler. 07:11:03
5 BY MR. MAO: 07:11:03
6 Q. Got it. So -- so -- so let me 07:11:06
7 ask you with regard to app developers, how 07:11:07
8 are app developers told that their 07:11:09
9 end-users' data is still being collected 07:11:12
10 even when sWAA is off? How are they 07:11:14
11 informed? 07:11:20
12 MR. SANTACANA: Outside the 07:11:22
13 scope. 07:11:23
14 A. I'm not sure how to answer 07:11:25
15 the -- the question as described, Mr. Mao. 07:11:29
16 I wonder if you could re-ask that. 07:11:31
17 BY MR. MAO: 07:11:31
18 Q. Sure, if I go back to that same 07:11:36
19 interrogatory number 15, right, we know 07:11:37
20 from Google's own responses, not prepared 07:11:41
21 by me but by your counsel and your 07:11:44
22 colleagues, that when sWAA is off, there 07:11:47
23 is still conversion and personalization. 07:11:49
24 Whatever extent that is, that may be for 07:11:54
25 somebody else. My -- my question to you 07:11:56

1 Q. But did Google ever consider 09:16:51
2 making sWAA-off turn off data collection? 09:16:53
3 A. As we discussed previously, it 09:17:00
4 depends on services, sWAA-off does disable 09:17:02
5 data collection for some services like we 09:17:06
6 discussed with the app indexing service 09:17:07
7 where when sWAA is off, data is not sent 09:17:12
8 to Google servers because it can't be used 09:17:15
9 for the purpose for which it would be 09:17:17
10 collected otherwise. 09:17:18
11 Q. Did Google ever consider making 09:17:20
12 sWAA-off turn off data collection for 09:17:22
13 Google Analytics? 09:17:25
14 MR. SANTACANA: Objection. 09:17:32
15 (Cross-talk.) 09:17:49
16 A. Sorry, Mr. Mao, I'll repeat 09:17:49
17 my -- my answer. I -- I don't believe I'm 09:17:52
18 able to answer. I think that's best for 09:17:55
19 the Google Analytics team as the Google 09:17:57
20 Analytics for Firebase service operates 09:18:00
21 outside of strictly the Supplemental Web 09:18:03
22 and App Activity setting. 09:18:06
23 BY MR. MAO: 09:18:06
24 Q. Got it. Did Google ever 09:18:07
25 consider making sWAA-off turn off data 09:18:09

CERTIFICATION

I, BELLE VIVIENNE, a Nationally
Certified Realtime Reporter, do hereby
certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 20th day of September
2022.

Belle Vivienne

BELLE VIVIENNE, CRR, CCR, RPR

* * *